

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROBERT FREMONT EVANS,

Petitioner,

v.

CASE NO. 05-CV-70900-DT
HONORABLE VICTORIA A. ROBERTS

JAN TROMBLEY,

Respondent.

**ORDER DENYING PETITIONER'S MOTION
FOR A CERTIFICATE OF APPEALABILITY
BUT PERMITTING PETITIONER TO PROCEED
IN FORMA PAUPERIS ON APPEAL**

Petitioner Robert Fremont Evans has appealed the Court's order denying his habeas corpus petition. Currently pending before the Court is Petitioner's motion for a certificate of appealability.

"[A] prisoner seeking postconviction relief under 28 U.S.C. § 2254 has no automatic right to appeal a district court's denial or dismissal of the petition. Instead, [the] petitioner must first seek and obtain a [certificate of appealability.]" *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). A certificate of appealability may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). Courts must either issue a certificate of appealability indicating which issues satisfy the required showing or provide reasons why such a certificate should not issue. 28 U.S.C. § 2253(c)(3); Fed. R. App. P. 22(b)(1); *In Re Certificates of Appealability*, 106 F.3d 1306, 1307 (6th Cir. 1997). "Where a district court has rejected the constitutional claims on the merits, the showing required to satisfy § 2253(c) is straightforward: The petitioner must demonstrate that reasonable jurists would find

the district court's assessment of the constitutional claims debatable or wrong." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

Petitioner alleges that he was pressured into pleading no contest to one count of first-degree criminal sexual conduct and that the trial court abused its discretion by rejecting his motion to withdraw the plea. The Court found no merit in these claims because the alleged violation of state law is not a basis for habeas corpus relief. *Lewis v. Jeffers*, 497 U.S. 764, 780 (1990). Furthermore, the record indicates that Petitioner's plea was voluntary and intelligent.

To the extent that Petitioner has stated a constitutional claim, reasonable jurists would not find the Court's assessment of the claim debatable or wrong. The Court therefore DENIES Petitioner's motion for a certificate of appealability [Doc. # 21, Dec. 22, 2005]. However, because Petitioner was granted *in forma pauperis* status in the District Court, he may proceed *in forma pauperis* on appeal without further authorization. Fed. R. App. P. 24(a)(3).

S/Victoria A. Roberts

Victoria A. Roberts
United States District Judge

Dated: January 10, 2006

The undersigned certifies that a copy of this document was served on the attorneys of record by electronic means or U.S. Mail on January 10, 2006.

s/Carol A. Pinegar
Deputy Clerk